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CHAPTER I: INTRODUCTION

A. EXECUTIVE SUMMARY

1. Introduction

On March 31, 1998, Pacific Bell (Pacific) filed a draft application with the California Public Utilities Commission (Commission or CPUC) to become a long distance provider pursuant to Section 271 of the Telecommunications Act of 1996 (the Act or the TA96). The submitted draft was in response to this Commission's requirement that it receive a draft application at least 90 days in advance of any filing with the Federal Communications Commission (FCC). The Act requires the FCC to consult with the relevant state commission concerning compliance with Section 271; the FCC, however, makes the final determination.

This *Final Staff Report* (FSR) is the second major report produced by the Commission's Telecommunications Division staff in its evaluation of Pacific's current draft application. The FSR provides a comprehensive list of corrective actions most likely to aid Pacific in complying with Section 271 requirements. Pacific has stated that it intends to work with staff and parties to determine solutions to the problems raised in the 271 process. To that end, Pacific should make a compliance filing, sometime in the future, with this commission. Any compliance filing should include data proving Pacific's compliance with issues identified in this report. In any case, Pacific has not yet filed its application with the FCC.

In the *Initial Staff Report*, staff determined that Pacific had not complied with 11 of 14 checklist items, as well as key over-arching issues required by the Act (e.g. Operations Support Systems (OSS), collocation, and Section 272 requirements). Even before issuance of the *Initial Staff Report*, Pacific expressed a strong desire to cooperate with Commission staff and parties to determine what corrective actions might bring it into compliance with the Section 271 requirements: Pacific filed a motion to change to a more collaborative process. The Commission agreed, inspired, in part, by similar actions taken by other commissions in states where Bell Operating Companies (BOCs) requested interLATA authority.

The collaborative process, while productive, had limitations. All parties found that time constraints often curtailed exploration and analysis of potential solutions. As a result, staff's recommendations for corrective actions represent the actions that staff believes will most likely lead to compliance. As Pacific implements corrective actions, staff encourages Pacific to perform further analysis of recommended solutions in this report to determine if a more efficacious solution exists. If Pacific determines that a better solution exists, it

should implement that solution. In the final analysis, Pacific must demonstrate that it has successfully met Section 271 requirements, not simply that it has implemented a specific set of corrective actions.

2. Five Key Conclusions

In analyzing the results of the collaborative process, staff came to five key conclusions that shape many of the recommendations for individual checklist items.

1. **Interconnection Agreement Performance.** Interconnection agreements are not performing as intended by either the Commission or parties to the agreements in question. In approving these agreements, the Commission and most parties intended the agreements to be self-executing commercial contracts, such as those in a competitive market.
2. **Wholesaler/ Retailer Communication.** Pacific and CLECs do not communicate in a manner consistent with their wholesale/retail relationship. Parties generally communicated as though they were in litigation, not in a business negotiation.
3. **Allowing Mass Market Competition.** Pacific has not opened its market to an extent that allows CLECs a reasonable expectation of serving the mass market. Staff believes that Congress and this Commission intended competition to reach all segments of the telecommunications market.
4. **Solutions That Meet Needs.** Pacific must realistically assess whether its proposed solutions serve to open its markets to competition. Staff has observed that Pacific often chooses solutions based on Pacific's determination of whether it complies with Section 271 requirements, not based on how effective they might be in promoting competition.
5. **Application Requires Quantitative Support.** Pacific does not adequately acknowledge that quantitative data is needed to support its application; generic statements of compliance will not suffice. Staff has been clear and consistent that to prove its compliance Pacific should use Commission-adopted performance measures. Quantitative measures can provide Pacific incontrovertible proof that its systems and processes are nondiscriminatory and fair to competitors.

a) Interconnection Agreement Performance

During the collaborative process, staff observed that three types of recurring problems caused interconnection agreements not to function as business contracts. First, the provisions in interconnection agreements that allow CLECs to incorporate new network elements and services have not produced timely results. CLECs have found this process too slow for a competitive marketplace and lacking in tangible results. Second, the process for resolving contractual disputes is burdensome, time consuming and inconclusive. Third, when CLECs seek to amend interconnection agreements, it becomes apparent that they have unequal bargaining power and no recourse to a neutral third party

that can authoritatively resolve disputes. These three problems illustrate that the provisions which were intended to provide interconnection agreement (ICA) flexibility have not worked.

Except for a handful of resellers, all CLECs have ICAs with Pacific. The relationship between Pacific and each carrier is governed by the ICA between the two parties. The contract sets all the terms and conditions of service, as well as the parameters for the services that competitors can obtain. Staff believes that it is important for ICAs to function as closely as possible to private contracts between parties in a competitive market.

Staff realizes that the Commission intended ICAs to be self-governing. However, this has not occurred; it appears to staff that ICAs are not functioning as contracts, but rather as playing fields for constant litigious behavior. As a result, staff urges the Commission to re-assert its role as an active neutral party that resolves disputes, consistent with prior Commission practice and the Act. Staff makes the following specific recommendations:

- simplify and clarify how competitors request new unbundled elements or services;
- expedite Pacific's responses so that requests are processed in a timely manner;
- settle disputes through either expedited Commission processes or commercial arbitration. This includes disputes about interpretations of current contract language and requests for new unbundled elements;
- propose fair and equitable generic amendments for access to operational support systems and other elements and services.

Staff believes these recommendations will serve to balance the competing and unequal economic incentives of Pacific and its competitors. Staff also recommends time limits to contract disputes that will allow both Pacific and competitors to progress with business plans. Staff proposes generic amendments because contracts for operational support systems or other elements should not become a factor which inhibits the development of competition. The terms of an interconnection agreement may shape Pacific's and competitors' business plans, but the actual negotiation of the contract language should not become a barrier to entry.

b) Wholesaler/ Retailer Communication

During the collaborative process, staff observed several types of communication breakdowns between Pacific and CLECs. These breakdowns highlight an earlier conclusion contained in the *Initial Staff Report*: Pacific treats CLECs as competitors rather than as wholesale customers. Pacific appears to have two primary channels of communication with CLECs. Each carrier has an account team assigned to it that functions as a liaison between Pacific's business units and the carrier. The account teams' primary responsibilities include: answering carrier questions about policies and

procedures in the interconnection agreement; settling disputes that arise from contracts, and informing carriers of new policies and procedures that affect a carrier's operations. The other major form of communication is the *CLEC Handbook* (not really a handbook, but more of an operations manual detailing myriad operational issues).

In the collaborative sessions, carriers cited numerous examples of policy changes that were either not communicated to them or were inaccurately communicated. Sometimes those policy changes were communicated solely via the *CLEC Handbook*. This surprised some carriers which were not aware of amendments to the Handbook. Pacific, however, contends that it is the carriers' responsibility to be aware of policy changes and that account teams cannot be reasonably expected to convey verbally all policy or procedure changes. Pacific encourages carriers to rely on the *CLEC Handbook* as the definitive source of information.

Staff's recommendations focus on improving both types of communication. To improve communication between account managers and carriers, staff recommends that assessment tools be developed and utilized to provide feedback to Pacific that will improve the responsiveness of its account managers. Staff also recommends training for personnel in the Local Service Center (LSC) where account managers interact with other Pacific personnel who resolve ordering and billing disputes for carriers. Finally, staff reminds Pacific that most wholesalers do not refer their customers to lengthy "handbooks" when their customers have questions about ordering services and service availability.

In the collaborative process, staff determined that the CLEC Handbook had substantial deficiencies. Accordingly, staff provided numerous recommendations to ensure that Pacific provides relevant information to the CLECs. If Pacific intends to rely on the handbook, staff encourages Pacific to redouble its efforts to keep the handbook timely and to notify carriers of changes that may be relevant to their operations. Staff understands that all commercial relationships are governed by rules, but compliance with those rules is much more likely to occur if there is open communication between the parties. While staff can make recommendations for improvement, only Pacific can improve communication by embracing its role as a wholesaler.

c) Allowing Mass Market Competition

During the collaborative process, Pacific did not demonstrate that it is able to accommodate CLECs entry into mass markets. Many carriers plan to enter the mass market through the combining of network elements or use of unbundled loops. Unfortunately, Pacific has not demonstrated that it has in place a workable method for CLECs to order and provision combined elements. Unbundled loops require termination in a collocation cage; Pacific has not made adequate collocation options available for Unbundled Network Element (UNE) combinations or unbundled loops. Further, Pacific does not yet have an automated system for processing those orders. Many of these issues

are described in the report as “gating” factors. Gating factors are those barriers to robust competition that Pacific has erected through the policies and procedures it has adopted.

Pacific proposes a process for combining network elements that is labor intensive at best and completely infeasible at worst. Pacific did not demonstrate the feasibility of its proposed method of combining network elements through actual data or a test. Other new entrants plan to use unbundled loops; this requires collocation at Pacific’s locations. However, collocation space is limited in many central offices, and Pacific has not explored certain types of collocation (e.g. cageless collocation) which would alleviate space constraints and make it possible for more carriers to collocate.

In addition, Pacific does not yet have Operations Support Systems (OSS) in place for network elements that afford CLECs a meaningful opportunity to compete. Pacific is just beginning to bring ordering systems on line that allow competitors to automatically generate an order on Pacific’s systems. Pacific has not demonstrated that those systems function effectively.

During the collaborative process the staff and parties sought a solution to the impediments to mass market entry. How UNEs are combined is an issue to be addressed in the Commission’s Open Access and Network Architecture Development (OANAD) proceeding. Pacific is automating the process surrounding generating orders for network element combinations; however, Pacific will still need to demonstrate that this new process provides CLECs with a meaningful opportunity to compete. Optional arrangements for collocation are recommended in this report; the process for determining lack of space in a CO will be addressed in the Local Competition Proceeding.

d) Solutions that Meet Needs

In the process of reviewing Pacific’s application, staff examined many solutions that Pacific designed either to open its markets or to address CLECs’ operational concerns. However, some of those solutions failed to open the market or to address carriers’ concerns. It appears to staff that Pacific designs solutions only to meet perceived legal requirements of Section 271. In staff’s opinion, while Section 271 does contain specific legal requirements, it also contains the larger requirement that Pacific open its market to meaningful competition.

As Pacific implements the solutions proposed this report, staff recommends that Pacific emphasize solutions which truly open the local market to competition. This requires Pacific to analyze solutions objectively and ask, “If I were facing this problem, would this solution allow me to conduct business?”

Staff would like to promote CLEC input in solution development. To that end, and as examples of that intent, staff recommends that:

- Pacific develop solutions to white pages, directory assistance, and E911 ordering concerns through a series of industry meetings;
- Pacific manage the placement of DSL compatible loops consistent with industry standards and carriers' concerns;
- Pacific develop new ordering interfaces only after determining carriers' needs and requirements.

e) Pacific's Application Requires Quantitative Support

Pacific must demonstrate with quantitative data that the competitive framework for ordering and provisioning is either at parity with its retail operations or affords competitors a meaningful opportunity to compete. Staff recognizes that a significant number of the company's resources will be devoted to the development, implementation, and application of performance measures. Nevertheless, only by providing quantitative data can Pacific prove that its wholesale processes function and afford competitors a meaningful opportunity to compete. The benefit to Pacific is significant: a system of performance measures will provide incontrovertible proof that its systems and processes are nondiscriminatory and fair to CLECs. The ISR stated that Pacific's commitments to undertake future action, or Pacific's assertions that certain conditions prevail, do not prove compliance. The *Initial Staff Report* relied on unambiguous statements in the FCC's 271 orders in making these assertions. Pacific may substitute test data for commercial data, but the Commission should consider only a rigorous independent test as probative.

In addition to the key conclusions, staff determined that Pacific is not fully complying with affiliate safeguards contained in Section 272 of the Act and relevant FCC orders. Staff has determined that Pacific is not complying in three ways with affiliate safeguards:

- First, staff believes there may be problems with Pacific's use of customer proprietary network information. The FCC requires state commissions to investigate past and present behavior in evaluating Section 272 compliance. A past lawsuit indicates that Pacific has already misused customer proprietary network information. Staff finds this past behavior significant.
- Second, Section 272(b)(3) outlines requirements for "separate officers, directors, and employees." Staff has identified deficiencies in Pacific's reporting structure, namely that certain officers report to both the parent company, Pacific, and/or an affiliate.
- Third, staff determined that Pacific's use a central service organization contradicts the stated intent of Section 272 – to keep personnel and reporting relationships, separate.

In this report, staff recommends compliance actions that should allow Pacific to comply with affiliate safeguards in Section 272 of TA 96.

3. Prospects for Compliance

Pacific has complied with four of the 14 checklist items. In its *Initial Staff Report*, staff concluded that Pacific had complied with three checklist items. Based on the collaborative sessions, staff determined that Pacific has complied with a fourth checklist item, reciprocal compensation for local traffic.

For the remaining checklist items (and identified, overarching issues) Staff believes that this report presents a detailed roadmap that, if fully implemented, can help lead to compliance. For some subjects, the map is still under development, but the report still provides basic directions.

B. PROCEDURAL BACKGROUND

On March 31, 1998, Pacific filed its draft 271 application with the Commission requesting approval for long distance authority under Section 271 of the Telecommunications Act of 1996. Pacific filed its draft in response to a ruling which required Pacific to file with this Commission at least 90 days in advance of filing at the FCC.

On June 26, 1998, in response to a motion filed by Pacific, the Managing Commissioner and assigned Administrative Law Judge (ALJ) issued a joint ruling changing the process for review of Pacific's application. The ruling established a collaborative process. That ruling directed Telecommunications Division staff, which had made an exhaustive review of Pacific's draft filing, to issue a comprehensive report assessing its findings and evaluating Pacific's compliance with the Act's requirements. The *Initial Staff Report*, which was issued on July 10, 1998, set the agenda for the collaborative process.

In the ISR, staff found that Pacific proved compliance with three items of the 14-point checklist: Access to Rights of Way, Access to Telephone Numbers, and Dialing Parity. Staff found that Pacific had not provided evidence that it was in compliance with eleven of the checklist items, or with Section 272 of the Act regarding affiliate safeguards. The ISR also stated that neither Pacific's Operations Support Systems nor its physical collocation policies were in compliance with the Act. Under the collaborative process adopted in the June 26 Ruling, Pacific, CLECs, interested parties and staff were to work together to develop solutions to each problem identified in the report which would enable Pacific to satisfy a particular checklist item. Each section of the report slated specific issues for discussion in the collaborative process.

The assigned ALJ convened a Pre-Hearing Conference (PHC) on July 15, 1998, to discuss the scope and procedure for the collaborative workshops. A total ex parte ban had been established from the issuance of the ISR, which was to extend through the issuance of the *Final Staff Report*. Part way through the workshops, the ALJ relaxed the ban imposed on staff to make it possible for staff to have separate meetings with parties during the collaborative sessions in order to further the process. An Assistant Chief ALJ not otherwise assigned to the 271 proceeding was named as facilitator/mediator for the collaborative process and was present daily at the workshop to offer his skills as facilitator/ mediator and to keep the process on course.

The collaborative workshops were held daily for five weeks, from July 22, 1998, through August 25, 1998. In order to cover all the issues, staff established a dual track: OSS, 911, white pages and directory issues were addressed on one track and the technical checklist items were addressed on the second track.

The ALJ assigned to the collaborative process developed two goals to govern the process:

1. to allow staff to explore and understand options for solutions to identified problems;
2. to reach agreements on solutions to recommend to the Commission.

To ensure that staff received the information necessary to prepare this *Final Staff Report*, the primary focus of each workshop session was to meet Goal #1. In terms of Goal #2 (reaching agreements), staff found that parties remained largely in litigation mode; as a result, agreements were reached only on some of the less important issues. To a large extent in writing this FSR, staff was in a position of having to recommend solutions to the Commission, based on its analysis of various solutions parties presented in the course of the workshop. Since staff's work was expanded by the lack of agreement among parties, the Managing Commissioner and assigned ALJ issued a joint ruling on September 14, 1998, extending the due date for the FSR from September 21, 1998, to October 1, 1998. By further ALJ Ruling on September 25, 1998, the issuance of the *Final Staff Report* was deferred until Monday, October 5, 1998, to be followed by Opening Comments on October 13, 1998 and Reply Comments on October 22, 1998.

C. STAFF REPORT CONTENTS

1. The Roadmap to "Yes"

The purpose of this FSR is to recommend steps that Pacific should take in order for the Commission to recommend approval of Pacific's application for long distance authority to the FCC. However, given the complexity of the issues and the limited time available in the collaborative process, in some cases the Roadmap is not completely developed. In their comments, parties should make recommendations as to what additional steps or milestones need to be in place before Pacific returns to the Commission with its compliance filing. Staff poses its proposals as "recommendations" rather than "requirements," with the understanding that the five Commissioners, not its staff, are the ultimate decision-making authority. In an upcoming decision, the Commission itself will make its own determination of the steps Pacific must take to comply with the 14-Point Checklist.

Staff cannot predict when Pacific might return with its compliance filing, demonstrating that it has accomplished the steps ordered by the Commission. No date is set for Pacific's compliance filing; it will be up to Pacific to determine, in a cooperative manner with CLECs, how rapidly solutions can be implemented. In some cases for OSS, specific dates have been set for particular milestones to be met. In most instances, the parties set those dates during the workshop.

In analyzing the various solutions presented by parties, staff was mindful of the need for any proposed solutions to assist in meeting this Commission's goal of developing a competitive local market. Local competition is floundering at the present time: the resale market is moribund with only a handful of new orders coming in. The so called "UNE platform," in which a competitor provides service using combinations of unbundled elements, is not yet a viable method of entry. At the present time, it is almost impossible for a residential customer to find an alternative carrier, unless that customer lives in one of the few areas around the state where cable companies are offering telephone service to their cable customers.

The solutions staff proposes in this FSR set a framework which will encourage competition to develop. In the course of the collaborative workshop, Pacific initiated a number of policy changes and process improvements, many of which parties welcomed and supported. In other cases, Pacific agreed to implement particular changes proposed during the workshop or which evolved from workshop discussions. In both cases, staff discusses those process and policy changes, and has either recommended that Pacific maintain those changes, or, in some instances, has recommended modifications.

In some cases, staff found it helpful to further analyze FCC orders to determine which proposed solution would be most appropriate. Those instances are described in the report.

Staff recommends that when Pacific submits its compliance filing, it should include three months of data on performance measures. In addition, Pacific must prove that it has complied with other staff recommendations which are adopted by the Commission, many of which are not addressed in the performance measures. The performance measures, along with other required information, will be Pacific's way of providing definitive proof that it has opened its markets and met Section 271 requirements.

2. Report Structure

The report is structured slightly differently from the *Initial Staff Report*. Separate sections have been developed for three non-checklist item issues that extend across or impact multiple areas. Those multiple-issue subjects are: performance measures/ incentives; Expedited Dispute Resolution (EDR) process, and; the Interconnection Network Element Request (INER) process.

The INER section was added because CLECs' problems with requesting new elements and services present a significant barrier to entry. Staff determined the need to expedite the INER process and to set specific timeframes for Pacific to respond to requests. In addition, staff proposes that Pacific create template amendments to ICAs for any CLEC to use when it wants to obtain a particular network function.

Staff proposes new dispute resolution processes with the intent of providing quicker resolution to outstanding disputes. Staff believes the dispute resolution processes could be used to resolve INER disputes, and also to address ICA conflicts.

In this report, some of the issues identified in the ISR are regrouped or otherwise reorganized. Still other issues from the ISR were eliminated during the collaborative process and therefore do not appear in this report. For example, while white pages, E911, and directory assistance were included among the checklist items in the ISR, those issues are discussed in the OSS section of this report.

Each section of the report reflects any agreements parties made during the collaborative workshop, and/or anything that Pacific agreed to do. It should be noted that even if a so-called agreement was reached, it does not necessarily mean that all the parties found that solution to be adequate, or that it presented the totality of the agreements that should be reached on the subject in question. Each section also presents staff's recommendation of the steps Pacific needs to take to comply with Section 271.

2. if parties are unable to develop a process to address concerns about versioning, the Commission should establish a policy for Pacific to follow;
3. parties need to resolve how to handle disputes arising from the Change Management Process.

While Pacific has agreed to follow the Change Management Process, staff is concerned that other parties may not have strong incentives to follow the process. Staff recommends the formal adoption by the Commission of this process to make it clear that the Commission supports and will enforce the industry consensus opinion. Similarly, parties' interest in abiding by the process will be enhanced by having a clear procedure for resolving disputes. Parties indicate that they may be able to agree on dispute resolution procedures through further meetings in the OSS OII. If resolution is not reached, staff recommends that parties file comments on the issue, perhaps concurrently with the settlement filing containing the Change Management Process. Finally, staff recommends that the Commission address versioning because the introduction of upgrades can have a significant operational and economic impact on CLECs. Without some form of versioning, the introduction of a new interface could result in some CLECs not being able to place new orders. Staff does not have a recommended position on versioning, but suggests that a brief comment round in the OSS OII could provide the Commission with sufficient information.

8. Local Service Center (LSC) Performance and Anti-Competitive Behavior

a) Background

The ISR identified two areas where the quality and character of Pacific's interaction with CLECs raised concern: the operation of the Local Service Center (LSC) and alleged anti-competitive behavior. The issues concerning the LSC generally centered on lack of attention to CLEC customer needs. Anti-competitive issues focused on Pacific's inappropriate use of Customer Proprietary Network Information (CPNI) when seeking to regain or "win-back" a customer from a CLEC, as well as inappropriate contact with CLEC customers by Pacific's wholesale staff denigrating the quality of the CLEC's service.

The ISR indicated that Pacific has not demonstrated that the LSC can provide timely, accurate processing of competitors' orders and questions. Staff found that problems persist with Help Desk staffing and training; escalation procedures; manual processing of resale and UNE orders; issuance of jeopardy and rejection notices, and interaction between LSC personnel and account managers. Staff expressed concerns about conflicting incentives for employees of the LSC. Staff further requested that Pacific provide the rules, incentives and compensation established by senior management for LSC employees at all levels and for account managers.

The ISR raised concerns about the use of CPNI to reclaim customers that had recently migrated to CLECs. Staff did not question Pacific's right to solicit CLEC customers, but questioned the proximity of those solicitations to the customer's transfer to a CLEC. Staff indicated that it wanted Pacific to present how it keeps the CPNI of CLEC customers confidential and how it develops its marketing campaigns for win-backs. The report also stated that the reports of three-way calls between a CLEC customer, CLEC representatives, and Pacific, in which the Pacific representative denigrates the CLEC's service, should be investigated.

b) Collaborative Process Summary

Pacific provided an overview of the organizational structure and workflow of the LSC. Pacific also described its escalation procedures for problems with the LSC. Competitors followed this discussion with proposed solutions. Pacific indicated that it had reorganized the LSC in the last twelve months. Some larger CLECs acknowledged that they had seen improvements in LSC performance in recent months. Smaller CLEC participants had continuing concerns with the performance of the LSC. In the course of the discussion, Pacific agreed to some general measures designed to improve LSC performance. First, Pacific will host a forum in September 1998 to discuss LSC issues including staffing and incentives. Pacific will give LSC representatives the appropriate Accessible Letters (Pacific's vehicle for informing CLECs of changes in Pacific's procedures) and will investigate cross referencing the LSC Methods and Procedures to the CLEC Handbook for LSC representative use. Pacific also agreed to track first level escalations in the LSC, by CLEC, and will share that information with the respective CLEC, upon request.

CLECs generally proposed greater specialization in LSC representatives and account team managers. Smaller CLECs suggested that a single point of contact at the LSC would allow them better service, and would avoid situations in which they have to repeat problems to a number of LSC representatives. Pacific countered that dedicated resources for small carriers would be inefficient, and that basic exchange orders are sufficiently generic that specialization by carrier is not necessary. In addition, Pacific asserted that it heard concerns expressed that dedicated resources might lead to discriminatory treatment and too intimate familiarity with a particular carrier's business plan. Pacific indicated that it would consider dedicated service representatives for companies of sufficient size. Pacific also said it would consider grouping LSC representatives into groups by type of order placed. For example, Pacific might establish a group of LSC representatives that specialize in orders placed by facilities-based carriers.

Pacific stated that it currently has dedicated account team managers for each CLEC, although for small carriers the account manager might be responsible for more than one CLEC. Rapidly growing CLECs suggested that Pacific may want to implement a process whereby account teams could expand to accommodate CLEC growth. Pacific responded

C. COLLOCATION

1. Initial Staff Report Summary

The following issues were slated for discussion in the collaborative process:

- A policy needs to be established for reservation of space in central offices.
- Pacific's rules for implementation of physical and virtual collocation are unclear and have undergone unilateral changes in recent months. The process should be clarified and made nondiscriminatory in all aspects.
- A process needs to be developed for Pacific to prove and the Commission to evaluate that space is not available for physical collocation in a particular central office.
- Pacific must prove that collocation is being used to combine UNEs for the commercial offering of service. Pacific must prove that competitors are able to use the platform to provide service.
- Pacific must also prove that competitors are able to use all methods it proposes to access and combine UNEs ordered from Pacific, since only physical collocation has been implemented to date.
- A nondiscriminatory policy should be adopted for the collocation of RSMs.
- Timetables must be set for implementation of physical and virtual collocation.

The ability to collocate in Pacific's COs is critical for CLECs which need to purchase unbundled loops or combine unbundled elements. At the present time, physical collocation is at a premium in many of Pacific's key COs, and lack of a 10' x 10' collocation cage in a particular CO can seriously disrupt a CLEC's business plans. Any policies which relate to collocation in general, especially those relating to reservation of space and a process for the Commission to determine that no space is available are of critical interest to CLECs.

In the following sections, staff addresses the process for obtaining physical and virtual collocation and the types of collocation available to CLECs in Pacific's territory. The FSR also addresses reservation of capacity, and collocation of Remote Switching Modules (RSMs). The process for ordering and provisioning UNEs combinations in a collocation setting is addressed in this section, as well as in the UNE and OSS sections.

2. Process for virtual and physical collocation.

The process for requesting and implementing physical or virtual collocation is extremely detailed, hence the need for a two-inch thick Collocation Handbook to describe the process. Following are a number of key areas discussed during the course of the

workshop and which staff determined warranted resolution to facilitate the collocation process.

3. Collocation Handbook/ Accessible Letters

Some of the lack of clarity in Pacific's rules can be attributed to poor communication between Pacific and collocators, and to a lack of written rules. Pacific agreed to provide changes in collocation processes and practices via Accessible Letters and will also post its Interconnector's Collocation Service Handbook on its web site.

The Handbook, which was distributed to staff and CLECs at the collaborative workshop, may have been available earlier, but since a number of pages are dated July 1, 1998, it appears that many portions of the Handbook were either recently revised or were recently developed. Some parties found the Handbook Pacific issued in late May/early June 1998 to be poorly organized and fragmented. Staff is not aware if the July 1, 1998, version of the Handbook corrected some of the problems found by CLECs. If CLECs find the current version of the Handbook to be poorly organized or unclear, they should notify Pacific. Pacific should work with CLECs to clarify the Handbook and ensure that it is a useful reference tool for collocators. The Handbook should include all steps for all types of collocation offered by Pacific, with the timelines and processes set out in logical sequential sections.

In order to clarify the process and alert collocators to changes in the Handbook, staff believes Pacific should institute a revision system, a simplified version of that used for its tariffs, so that collocators can see when a particular page was changed, with lines in the margin to show which section was changed. In addition, Pacific should issue Accessible Letters for all changes in its collocation rules, and send those Accessible Letters to all collocators. This should improve communications and eliminate some of the misunderstandings that have arisen in the past over how Pacific administers its collocation process.

Any competing carrier which finds any of the future changes Pacific makes to its collocation rules to be discriminatory may file under the Expedited Dispute Resolution process discussed elsewhere in this Report, asking the Commission to review Pacific's proposed change.

4. Types of Collocation

Pacific offers physical and virtual collocation alternatives, and recently began to offer common area collocation. In common area collocation, two or more CLECs share a caged area. Because collocation is needed for interconnection and access to UNEs, and because space is at such a premium, parties to the collaborative process looked for creative solutions which would increase the number of collocators in offices with

inadequate space. Some other alternatives suggested included: cageless, adjacent on-site, and adjacent off-site collocation. In the course of the collaborative workshop, parties agreed that Pacific should terminate the CLECs' copper or fiber entrance facilities from adjacent CLEC locations for the purpose of interconnection or access to UNEs. Pacific is to develop the methods and procedures to implement this process. Pacific did not agree to offer adjacent collocation with facilities on Pacific's premises (e.g., vault in parking lot). Also, for security reasons, Pacific is opposed to cageless collocation. Since no detailed record was developed about security issues associated with cageless collocation and possible mitigating measures, staff will not recommend that cageless collocation be authorized at the present time. However, staff recommends that this form of collocation be explored by the Commission in its local competition proceeding.

In addition to cageless collocation, CLECs proposed that they be allowed to sublease some of the unused space in their cages to other carriers. In the course of the workshop, parties agreed that Pacific should allow collocation space sub-leasing. The cage must accommodate additional POT bays or POT bays must be shared by the carriers, but the space requirements for additional POT bays are less than the space required to construct an entire collocation cage. Pacific is currently developing M&P to provide such sub-leasing, including processes to terminate unbundled elements. In a sub-leasing arrangement, the sublease will be between the two carriers involved; Pacific will not be a party to the agreement. However, Pacific must be notified of the sublease, and the sub-leasing carrier will order UNEs directly from Pacific. Since collocation space is a limited resource, carriers should not extort excessive rents. Carriers which agree to sublease their collocation space should not charge subleasing carriers more than their prorated share of the space. Pacific shall be indemnified and held harmless if the subleased space turns out to be inadequate for the purposes intended by that carrier wishing to use the space.

5. Collocation of Pacific's Affiliates

Parties expressed concern that Pacific's affiliates would be afforded preferential treatment in obtaining CO space. Pacific responded that the process for affiliates to gain space is similar to the process used by CLECs, although affiliates have a different form to complete and must go through the process of gaining CPUC approval, pursuant to Public Utilities Code §851. The timeline for affiliates to gain space is 135 days or longer, compared to 120 days for a CLEC to gain access. Pacific also stated that it does not reserve space for affiliates.

According to Pacific, affiliates are allowed greater access to Pacific's facilities than a CLEC because affiliate employees have been background-checked and trained by Pacific, and the company can discipline affiliate employees. Affiliates do not always have an enclosure and are sometimes given space not suitable for CLECs (e.g., areas with no nearby entrance or areas where affiliate employees have to walk through Pacific's area to get to their equipment).

In addition, if Pacific does not have space for collocators in a particular CO, Pacific should not be permitted to provide space in that CO for any of its affiliates. Affiliates are advantaged in that they do not have to operate out of cages and can use less space, and space that is not secure. Pacific needs to develop creative solutions to ensure that CLEC competitors have the same opportunity to use space in its COs as do Pacific's affiliates and Pacific itself.

6. Cage-to-Cage Collocation

Pacific described the two methods of cage-to-cage collocation: those involving a single CLEC and those involving two different CLECs. In the case of cage-to-cage involving only one CLEC, Pacific's Collocation Point of Contact (CPOC) arranges to have the cages cabled together. The FCC addressed the issue of cage-to-cage between two CLECs in its *Local Competition Order*, Section 51.323(h). That section requires the ILEC to provide connection between the equipment in the collocation space of two or more collocating carriers, unless the ILEC permits the collocating parties to provide this connection for themselves. Pacific currently offers DS1 and DS3 and is negotiating with one carrier on DS0 interconnection. Pacific requires CLECs to negotiate the provision for cage-to-cage connections in their ICAs. Since amendments to ICAs can be problematic, Pacific should develop a template which is readily available to CLECs upon request. However, if CLECs have difficulty negotiating the amendments to their ICAs, they would have recourse to the EDR process described elsewhere in this report.

While CLECs would prefer to have the option to provide the connection themselves, staff does not recommend expanding the provisions of §51.323. Staff believes that Pacific should complete such cage-to-cage connections within 30 days of a request.

7. Cage Utilization Requirements

There are two aspects to cage utilization: (1) the percent utilization that is required before additional cross connect capacity, cabling and power will be provided to a collocation space, and (2) under-utilization by carriers. Pacific set an 80 percent utilization rate before accepting augmentation requests. During the course of the workshop, parties discussed dropping the utilization cutoff to 60%, and Pacific agreed to review its policy. The issue was still open at the conclusion of the workshop.

The CLEC is in the best position to know its own business plan and must be able to accommodate future customer growth. The CLEC must have the necessary capacity in place at the time that it wins a customer. Therefore, staff recommends that Pacific accept CLECs' requests for augmentation in collocation space when CLECs reach a 60 percent utilization rate.

Staff is also concerned about potential under-utilization of collocation spaces. Staff does not intend to recommend a minimum level of utilization for a CLEC to retain its collocation space. However, the FCC authorized ILECs to “impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers...”⁷ If a CLEC accepts a collocation space and has all the cabling in place to make that collocation space operational, and does not use that space within six months from the time it becomes operational, staff recommends that Pacific should expediently reclaim that space, if that particular office is exhausted and other potential collocators would be denied space. Collocation space is at a premium and should not be stockpiled by carriers who are not using the collocation space to provide telecommunications services.

8. Bonafide Request (BFR) Process for Requesting Collocation

Pacific utilizes its BFR (or INER)⁸ process for carriers to request collocation in COs which are not in its tariff. Pacific agrees that the carrier which submits the BFR should be first in line for any collocation space found in the office, although a requestor does have a ten-day deadline to respond to Pacific’s notice of space availability in order to reserve its space in the queue.

Parties did not agree on the payment process for ensuring a carrier’s possession of a collocation cage, and which would trigger construction of the cage. Pacific said that under its tariff, carriers have 30 days to remit payment. The advance payment, as specified in Pacific’s tariff, is 50 percent of the construction costs. Some smaller carriers wanted a shorter time period in order to hasten the start of construction, while larger carriers have difficulty cutting checks in 30 days. If the carrier first in line for available for collocation space is delayed in cutting a check, the start of construction could be delayed for all other CLECs on the waiting list to get into that particular CO. MCI suggested that the CLECs be allowed to post a revolving bond to cover the 50% down payment. The bond would only be cashed if the CLEC did not pay the 50 percent within 30 days of the start of construction. Otherwise the bond would remain as a surety.

Staff’s goal is to take all steps necessary to expedite and streamline the collocation process. Pacific is not harmed by the posting of a security bond, in lieu of cash. Therefore, staff recommends that, as an alternative to the 50 percent construction down payment, CLECs be allowed to provide a revolving bond in the amount of the down payment. The bond would be cashed by Pacific if the CLEC does not submit the required 50 percent down payment within 30 days of the commencement of construction. Pacific should notify any carrier providing a bond of the specific date when construction commences in a particular CO.

Replacement of the check with a bond does not address the problem smaller carriers raised that allowing 30 days to make payment could delay the construction process for other

⁷ FCC, Local Competition Order, §51.323(f)(6).

⁸ The timeline for the BFR/INER process is discussed elsewhere in this report.

carriers wishing to collocate in the CO. This delay could be by as much as a month, if the carrier first in line is delayed in providing its payment. Staff suggests that large and small CLECs meet to discuss an acceptable timeframe for carriers to provide Pacific with either a check or a surety bond. CLECs should send a letter to Pacific requesting that the time be shortened; a copy of that letter should be sent to the Director, Telecommunications Division. Pacific should change its policy to reflect the shortened time period recommended by CLECs.

During the workshop parties discussed whether Pacific should proceed with collocation while an Advice Letter tariffing the CO is pending at the Commission. Staff would like to encourage Pacific to take all steps to expedite the process. While construction work could not start until the Advice Letter is effective, Pacific could receive and process applications to be ready to start construction as soon as the Advice Letter is approved.

The bond requirement described above would apply to any collocation arrangement requested by CLECs, including those for tariffed offices.

9. Reservation of Contiguous Cages

CLECs would like to be able to reserve adjacent blocks of space so that if a CLEC needs an additional cage area, the contiguous space would be available. A carrier requesting collocation space should be able to notify Pacific that it anticipates significant growth which would require expansion into a second cage. To the extent possible, Pacific should not fill cages consecutively but fill in cages in a manner that would allow for contiguous growth. However, if other carriers want to collocate in that CO and the reserved space is needed, that cage will be granted to the carrier filing an application. Pacific should notify the carrier which requested reservation of contiguous space that the contiguous space is no longer available.

While staff recognizes that having contiguous cages would be of benefit to CLECs, any policy of reserving those spaces should not have the effect of keeping other carriers from collocating in that CO. In those offices where space is not at a premium, it should be easier for Pacific to meet CLECs' requests for contiguous space.

a) Timetable for implementation of physical and virtual collocation.

While parties commented on this issue, the implementation timeline was not discussed in the course of the collaborative workshop. Pacific's homework referred to the terms and conditions in its 175-T tariff and its interconnection agreements, which include a standard provisioning interval of 120 days. Some carriers proposed that the interval be shortened to 60 or 90 days.

Despite the increased demand for collocation spaces, staff believes that the relatively brief record of this proceeding does not justify changing the 120-day provisioning timeframe in

Pacific's tariff. After reviewing the outcome of the 60 collocation requests Pacific received from CLECs in April 1998, it appears that the current collocation workload precludes instituting a shorter time frame. However, staff recommends that the issue be addressed by the Commission outside the 271 docket.

While staff finds the record to examine the time interval for implementing collocation to be inadequate, staff feels that Pacific should be held to its 120-day tariffed interval. The provisioning interval serves as one of the performance measures proposed in this docket, which measures Pacific's timeliness in turning over collocation cages.

10. Collocation of Frame Equipment

Parties to the workshop agreed that Pacific should provide frame equipment and repeaters necessary to extend UNEs into the CLEC's collocation cage under Method 1 of Pacific's "Five Methods of Access to UNEs" to enable the CLEC to combine the UNEs.

11. Floor Plan Content

CLECs expressed concern that the CLEC or third party engineer (the engineer who visits COs reported as exhausted by Pacific to determine whether space is indeed exhausted) be able to examine the entire building where the CO is housed, not just the space on floor plans, which is limited to what Pacific has determined is useable for CO equipment. Also, CLECs would like the floor plans to indicate equipment that is going to be removed, or is not in use.

Pacific responded that its floor plans reflect what is occupying the space, i.e., they identify Pacific's equipment, administrative space, affiliate space, switch footprints, and collocator space. The floor plans do not include square footage nor do they identify whether Pacific's equipment is in-use, idle or obsolete. Also, Pacific states that the floor plans show only CO eligible space in a particular building.

Staff does not recommend making changes to Pacific's floor plans. Additional information can be obtained during a walkthrough of the CO, whether conducted by a CLEC engineer or third-party engineer.

12. Staff Recommendations for Collocation Process Issues

- Pacific should place its Interconnector's Collocation Service Handbook (Handbook) on its web site and apprise all CLECs of that website address.
- Pacific should institute a revision system that shows, on each page, the date of the latest change and a line in the margin beside the section that was changed.

- Pacific should keep the Handbook on the website up to date. The website should include a summary of all Handbook changes made over the preceding six months.
- Pacific should solicit input from CLECs on how to clarify and better organize its Collocation Handbook.
- Pacific should send Accessible Letters to all collocators to alert them of changes in the collocation process.
- Pacific should provide alternatives to its current physical collocation offerings: common area collocation and cages with less than 100 square feet for those offices where less than 100 square feet is available.
- Pacific should allow CLECs to sublease collocation space to other carriers, and Pacific will deal directly with sub-leasing carriers for ordering UNEs.
- Pacific should make every effort to assist carriers who wish to interconnect at adjacent locations.
- Pacific should examine the possibility of implementing cageless collocation in its COs.
- Pacific should not deploy ADSL technology out of any exhausted CO in which competitors are not able to collocate to offer their own xDSL service.
- Pacific should, within 30 days of a request, provide cage-to-cage connections between collocation cages leased by two or more CLECs.
- Pacific should allow CLECs to augment their collocation space when they reach a 60 percent utilization rate.
- Pacific should allow carriers the option of submitting a bond to cover the 50 percent advance payment, in lieu of a check. Pacific would cash the bond if the CLEC did not submit the required 50 percent down payment within 30 days of the commencement of construction. Pacific should file an Advice Letter to make this change to its collocation tariff.
- Pacific should accept applications and payment in advance of its Advice Letter becoming effective. However, no construction work should commence until the Advice Letter is approved.
- Pacific should complete physical collocation installations within the 120-day provisioning timeframe established in its 175-T tariff.

However, staff suggests that the provisioning of interconnection trunks be monitored through performance measures to ensure continued progress.

2. NXX Code Openings

a) Initial Staff Report Summary

Staff recommended that the following issue relating to NXX code openings be discussed in the collaborative process:

- Develop procedures for activation of CLEC NXX codes in Pacific's switches and a method to verify compliance.

CLECs asserted that Pacific has not activated CLEC's NXX codes in its switches in an efficient and timely manner. Because CLECs cannot mechanically test NXX code openings for themselves they have to rely on customer complaints about uncompleted calls to become aware of missed openings. The problem persists in spite of CLEC escalation of these complaints to Pacific management and to the FCC. Pacific did not provide evidence that the process used to activate NXX codes for CLECs is at parity with Pacific's own code opening experiences in its retail operations.

b) Collaborative Process Summary

The three major NXX-related issues discussed in the collaborative process were as follows: processes in place for NXX code openings, processes in place for correcting NXX code opening deficiencies, and positive testing and notification of NXX code openings.

To open NXX codes, Pacific uses the industry standard, 66-day process. The process and requirements to be used by CLECs are described in the CLEC Handbook, Section 40, which is based on best practices of the Network Interconnection and Interoperability Forum, and have been in place since September 1997. On the 66th day, if the process is error free, the newly opened NXX is published in the Local Exchange Routing Guide (LERG), allows all telecommunications carriers nationwide to route calls correctly.

Following is a description of the 66-day process:

1. Pre-NXX code opening.
 - Carriers request NXX code openings from Lockheed (California Code Administrator).

- Based on notification from Lockheed, Pacific's databases are populated for routing and billing.
 - NXX codes are programmed by the CO/tandem network translations group using recent change capabilities.
2. Testing and verification prior to NXX code openings.
 - CLECs must provide a valid test number available for Pacific to test NXX code opening.
 - Pacific performs a call-through test of the NXX code to test if the assigned end-office and tandem routing are correct and functioning. This step is redone if verification of the NXX code opening is not made.
 - After re-test, if there is no verification of the NXX code opening, Pacific contacts the appropriate CLEC and attempts to resolve the problem.
 3. Post-NXX code opening.
 - If CLECs discover problems with NXX code openings they must notify the LOC for initiation of a trouble ticket for repair of the problem.
 - In each month following an NXX code opening Pacific performs a Tru-call test which verifies that NXX code openings, and billing and network translations for all NXX codes in the network, are functioning properly.
 - If Pacific discovers problems with NXX code openings for either a CLEC or for its retail operations, a trouble ticket is initiated with the LOC.

CLECs believe that Pacific's processes for NXX code opening deficiencies are not always followed or do not functional well. CLECs assert that at a minimum there is a window of time after NXX code opening but before the monthly Tru-call verification, where customers will not receive calls if the CLEC's NXX code was not opened. CLECs assert that Pacific's process to correct these problems through the LOC is cumbersome and slow.

To address CLEC concerns Pacific plans to introduce a process in its digital switches by September 1999, that will remove the manual aspects of openings. The process would automate the process of NXX code opening via recent change technology and will allow for positive verification electronically of the results of the NXX code opening. CLECs were invited to participate in the development of external reporting capabilities for that system but were given less than two weeks to provide input. The automated process is not being implemented for Pacific's analog switches.

c) Discussion and Staff Recommendation

Pacific should treat problems of CLEC customers not receiving telephone calls for any period of time as a serious problem. Further, Pacific has an automated tool that can detect deficiencies in the NXX code opening process. Therefore staff recommends that for new code openings or new switch turn-ups: 1) Pacific verify all new NXX code openings with Tru-call, 2) Pacific process CLECs' requests for Tru-call, on an ad hoc basis, to test and verify that NXX codes are correctly opened. For existing NXX codes where customers

experience problems, CLECs should be allowed to request use of Tru-call on an ad-hoc basis to verify that the NXX code is open. A single trouble ticket submitted to the LOC should initiate the Tru-call testing and the repair process. CLECs are responsible for providing Pacific with functioning test call numbers with every request for new NXX codes.

Staff also recommends that CLECs' requests for positive notification of NXX opening be provided on a real-time and mechanized basis (i.e. website). Specifically staff suggests that Pacific provide notification of NXX code openings on its Website within 24 hours of opening. The website would contain information about new NXX openings at each CO with the date and time the code was opened, and also show Tru-call test results.

Staff recommends that Pacific initiate such a system of positive notification for code openings. If positive notification were provided automatically and in real-time, CLECs would not need to use the Tru-call process on an ad hoc basis. Lastly, staff suggests that NXX code openings be subject to performance measures.

Finally, in the collaborative process Pacific and CLECs agreed to exchange a single point of contact for immediate resolution of any problem that would prevent Pacific from performing complete testing in conjunction with a code opening. Pacific will notify the affected CLEC within 24 hours if it determines that the CLEC has no trunking established to a particular tandem switch. Pacific should notify all CLECs of the policy through Accessible Letters and through updating the CLEC Handbook.

3. Section 252 (i)

Section 252 (i) of the Act requires that LECs make available, to any requesting carrier, any interconnection service or network element provided under any previous agreement approved under section 252. The interconnection service or network element provided must be on the same terms and conditions as those provided in the previous agreement. The 8th Circuit has ruled against the FCC's definition that CLECs can pick and choose elements of previous interconnection agreements, and instead ruled that CLECs could adopt the entire agreements only.

a) Initial Staff Report Summary

The following issue was slated for discussion in the collaborative process:

- Review Pacific's reasons for refusing paging companies' requests under Section 252 (i).

Pacific has refused requests from paging companies to execute interconnection agreements with the same terms and conditions as Pacific's agreement with Cook Telecom, Inc.,